

(916) 445-5047

October 16, 1978

Mr.

Dear Mr. :

You are right--my letter dated September 18, 1978, was not as precise as it could have been. Notwithstanding, I remain of the opinion that the Youth Fund property is not qualified for a property tax exemption. Permit me to try again to explain why.

The real property claimed is not qualified for the exemption because this property is owned by Building Corporation, which is a non-qualified owner. is a non-qualified owner because it does not have a qualifying tax letter. Since the property must be both owned and operated by a qualifying organization, the real property cannot be granted the exemption (see Rev. & Tax. Code § 214).

The personal property cannot be granted the exemption because it is not used exclusively for charitable purposes. That is, when Youth Fund permits the property to be "used exclusively by chapters and related organizations" (quote from Form B, 1978 claim), then the property is not used for charitable purposes. chapters are not qualified users of the property for the reasons I described in my September 18 letter. Absent an exclusive use for charitable purposes as required by section 214, Youth Fund property does not qualify for the exemption.

"Exclusive use" is discussed in Honeywell Information Systems, Inc. v. County of Sonoma, 44 Cal. App. 3d 23. The court concluded certain incidental uses are permitted but the "incidental use must be directly connected with, essential to, and in furtherance of the primary use and must be reasonably necessary for the accomplishment of the primary purpose for which the tax-exempt institution is organized". The use of Youth Fund property must then be restricted to only "religious or charitable" use of the property as your proposed articles of incorporation would so restrict.

Mr.

-2-

October 16, 1978

Permitting the property to be used by chapters, which we conclude are fraternal organizations, would constitute a fraternal use of the property. Or, if the personal property is not directly used by chapters, but is used to permit or promote the use of the building or grounds by chapters, then in my opinion use of the personal property is nevertheless non-qualifying.

Each and every organization using property on which an exemption is claimed must qualify under section 214 of the Code. If the owner of the property permits the property to be used by a non-qualifying organization, then the property cannot be granted the exemption. Therefore, so long as Youth organizations or any other non-qualifying organizations use the property of Youth Fund, then the property cannot be granted the exemption.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fr

bc: Mr. Verne Walton (W. Grommet)
DAS File
Legal Section

(916) 445-5047

September 18, 1978

Dear Mr.

I have reconsidered the claim for property tax exemption of Fund of Southern California as you requested. I have concluded Fund does not qualify as a charitable organization within the meaning of Section 214 of the Revenue and Taxation Code.

I reach my decision in light of my examination of the apparent purposes for which Fund is using its property. I have concluded Fund is a fraternal organization and, thus, is prohibited from qualifying for the exemption by reason of section 214(5).

Websters New College Dictionary defines fraternal as:

"of, relating to or involving brothers"

and:

"of relating to or being a fraternity or society".

And Websters defines a fraternity as:

"a group of people associated or formally organized for a common purpose, interest or pleasure".

clearly is a fraternal organization within the common meaning of the words fraternal and fraternity. Admittedly, section 214(5) does not prohibit all activity which promotes fraternalism or brotherhood. Many qualifying organizations promote fraternalism, but they do so in the sense that fraternalism

September 18, 1978

is only incidental to their primary charitable purpose and their activity is directed primarily toward dispensing charity to the community at large. Demolay, on the other hand, directs its activity inward, toward the benefit and development only of its own members. Charity to the community is only incidental to the development of members. I do not find sufficient evidence to show 's activity benefits the community as a whole or an unascertainable and indefinite portion thereof, to constitute a charitable activity (see Stockton Civic Theatre v. Board of Supervisors, (1967) 66 Cal. 2d 13).

Evidence to support my conclusion is found in 's own recruitment literature:

"Who may join? The basic requirements are that a young man must be between the ages of 13 and 21, believe in god, be of good character and reputation, and be recommended by two chapter members and a master mason." (Emphasis added.)

"What is ? is a fraternal youth organization...." (Emphasis added.)

is different from other young groups, since it is a unique fraternal youth organization. It is a selective organization open only to the finest young men." (Emphasis added.)

It is, therefore, reasonably clear that is an organization whose membership is restricted, select, and open to only a selected few in the community. Its dominant activities are directed toward service to its own membership. Charitable activity directed toward the community at large does not appear to be the dominant purpose of .

The welfare exemption cannot be enjoyed by any organization which does not have charity as its primary and sole object. Where the primary purpose and object of an organization is to promulgate the ideals of the fraternity, then charity is but an incidental feature. Section 214(5) demands the reverse. It demands fraternal, lodge, or social club purposes be clearly incidental to the charitable purpose.

The decision as to whether or not a youth organization qualifies for the charitable welfare exemption can be guided by examination of the following factors:

September 18, 1978

1. The extent to which membership is open to all the youth of the community, there being little or no qualifying restriction upon membership.
2. The extent to which the activity of the organization benefits the community at large.
3. The extent to which the organizations' activities are not self-serving to promulgate the ideals of the organization, but are directed toward charity to the community at large.
4. The extent to which the organizations' activities are not primarily social, but are a charitable activity within the meaning of section 214.

We have not received revised articles of incorporation, which during our last phone conversation you indicated you had transmitted to us. However, considering the denial of Fund's claim on the other grounds discussed herein causes the correction of the articles of incorporation to be a ¹moot requirement.

Very truly yours,

Robert R. Keeling
Tax Counsel

RRK:fr

¹Word should be "moot".